IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9071 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRISH NATUBHAI PATEL

Versus

KARAMSAD MUNICIPAL BOROUGH

Appearance:

1. Special Civil Application No. 9071 of 2003

MR TR MISHRA for Petitioner No. 1-8

MR MUKESH H RATHOD for Respondent No. 1-2

MR NIRDOSH H RATHOD for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 11/03/2004

ORAL JUDGEMENT

1. RULE. Learned advocate Mr.Mukesh H. Rathod for respondent Nos. 1 & 2 waived notice of Rule. With the

consent of parties, this matter is taken up for final hearing today.

2. The present petition is filed for various prayers, one is to direct the respondents to pay pay scale as per 4th Pay Commission with effect from 1.1.1986 and in alternative, the petitioners have prayed for paying arrears with effect from 1.1.1990. The petitioners have also prayed for giving directions to the respondents to pay arrears as confirmed and directed by this Court in Special Civil Application No.8589 of 1999 with interest.

3. It has been submitted by the learned advocate Mr.T.R.Mishra appearing for the petitioners that inspite of the order dated 21.3.2001 passed by this Court [Coram : Justice K.M.Mehta, J.] in Special Civil Application No.8589 / 1999, no payment towards arrears is made though as per the direction given by this Court, arrears were to be completed in the year 2001.

4. On behalf of the respondent, the learned advocate Mr.Rathod has inter alia submits that as such, the Municipality is having acute financial crises and he submitted that there is outstanding electricity due of about Rs.60 lakhs. He submitted that because of financial incapacity, the order passed by this Court dated 21.3.2001 in S.C.A. No.8589 of 1999 has not been complied with. He also submitted that as such, the petitioners are not working in the sanctioned set up and since there is no availability of sanctioned set up qua petitioners, grant is not available to the Municipality and as a result thereof, there is financial crises to make the payment and therefore, he submits that since there is inability on the part of the respondent Municipality to make payment, the payment has not been made.

5. As against this submission made by the learned advocate Mr.Rathod, learned advcoate Mr.T.R.Mishra submits that the petitioners are working within sanctioned set up.

6. Considering the above, it appears that on the issue of sanctioned set up, the respondent Municipality cannot now make grievance since the award passed by the labour court is not only confirmed but on the basis of the same, the matter was considered by this Court in Special Civil Application No.8589 / 1999 and the order on

21.3.2001 has been passed. As per earlier order dated 21.3.2001 of this Court, the Municipality is ordered to make payment and therefore, the Municipality cannot be permitted to back out from the same. There is no dispute on the point that the order dated 21.3.2001 has passed by this Court in Special Civil Application No.8589 / 1999 whereby the Municipality has to make payment but the fact is, the payment has not been made. It may be that the Municipality may have financial constraints in making payment of arrears but there is no other material brought on record by the Municipality by production of income and expenditure or surplus money etc. to show that there is no capacity at all to make the payment. Even otherwise also, even there are financial difficulties, it is for the Municipality to raise income and to generate fund with a view to clear its financial responsibilities. Since the ground raised is of financial difficulties, with a view to see that the Municipality can also reasonably make payment and at the same time, the petitioners may also get some amount towards the arrears, I find that the following direction will meet the ends of justice.

7. The respondent municipality shall pay every month the amount equivalent to the salary of the concerned petitioners towards arrears which are required to be paid as per the order dated 21.3.2001 passed by this Court in Special Civil Application No.8589 / 1999 and shall continue to pay the same until all the arrears pursuant to the said order of this Court is cleared. It is clarified that aforesaid payment of the amount equivalent to the salary shall be in addition to the regular payment of the salary to the concerned petitioners. It is further clarified that the amount of the aforesaid first installment shall be paid on or before 15th April, 2004 and thereafter the Municipality shall continue to make the payment by 15th day of each month to all concerned petitioners until payment of full arrears.

8. After aforesaid amount is paid and the entire arrears are cleared by the Municipality, it would be open to the petitioners to claim other financial benefits of 4th Pay Commission with effect from 1.1.1986 if otherwise permissible under the law.

9. The petition is disposed of in terms of above directions. Rule is made absolute to the extent above. No order as to costs.

Date : 11.3.2004 [Jayant Patel, J.]

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